

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1869 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL PRABHUBHAI SHANKARBHAI

Versus

MANIBEN WD/O NARSINBHAI MARGHABHAI

Appearance:

MR RM VIN for Petitioners
MR SR SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/02/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original defendants-tenants against the respondents herein who had filed a suit being Regular Civil Suit No.385 of 1977 in the Court of Civil Judge (J.D.) Anand. The case of the plaintiffs in the said suit was that the plaintiffs are the owner of the suit property mentioned in para 2 of the plaint. The ground floor of the suit premises was given on lease to the defendant no.1 at the rate of Rs.45/-p.m. That the defendant no.1 made default in payment of rent and he has not paid rent from 1.3.1976 to 31.8.77 amounting to Rs.810/- and according to plaintiff the defendant no.1 was in arrears of rent for a period of more than six months. It is also the case of the plaintiff that the defendant no.1 has built his own bungalow in the Swaminarayan Society and staying there from 1.1.77 and he has sublet the suit premises to defendant no.2 without his knowledge. After the suit notice suit was filed for getting decree for possession on the ground of arrears of rent, subletting and acquiring alternative accommodation.

#. The defendants appeared in the suit and filed their written statement at Ex.14. They have pointed out that Rs.45/- is not the standard rent. It was stated that the premises in question was taken on rent on behalf of the joint family and therefore it cannot be said that the defendants have acquired suitable accommodation and house in Swaminarayan Society was built up in the name of defendant no.1's brother i.e. defendant no.2 since other members of the joint family are residing in the suit premises, there is no question of passing any decree on the ground of acquiring suitable accommodation. It was their case that the standard rent should be fixed at Rs.25/-p.m. The Standard Rent application was also preferred being Misc. Application No.46/77.

#. The learned trial judge framed various issues at Ex.16 and thereafter after recording the evidence and hearing the arguments of both the sides the learned trial judge by his judgment dtd.10.12.1983 decreed the suit of the plaintiff on the ground of acquisition of the suitable premises. so far as the arrears of rent is concerned the trial court came to the conclusion that the defendant no.2 was ready and willing to pay the rent similarly the question of subletting was also negatived by the learned judge and the standard rent was fixed at Rs.35/-p.m. The learned trial judge has accordingly allowed the suit on the ground of suitable alternative accommodation and standard rent application being Misc. Application No.46/77 was also accordingly disposed of. The decree of the trial court was challenged by the

defendants by preferring an appeal being Civil Appeal No. 34//89. The defendants had also challenged the order of the trial court, fixing the standard rent by way of Revision Application No.1/83. The learned 2nd Assistant Judge, Nadiad, dismissed the said appeal as well as the revision application. The aforesaid judgment of the appellate court is challenged by the petitioners-tenants by filing the present revision application.

#. Mr.R.M.Vin, learned advocate for the applicants has mainly argued that no decree under Sec.13 (1)(L) could have been passed inasmuch as the premises in question was hired for the benefit of joint family and therefore even if one member of the joint family acquire suitable residence no decree could have been passed as long as other members of the joint family were occupying the suit premises. Mr.S.R.Shah, learned advocate for the respondents has supported the decree of the trial court which was confirmed by the appellate court. It was submitted that when both the courts have found that the tenants have acquired suitable accommodation the said finding cannot be disturbed by this court in revision application.

#. I have heard the arguments of both the advocates in detail.

#. It is not in dispute that the premises was originally hired by the defendant no.1 and the rent receipts are also in his name. The defendant no.1 has stated in his evidence that after the suit premises were hired by him, he alongwith his three brothers Bhailalbai, Tribhovandas and Naginbai were staying in the suit premises. He has also further stated in his evidence that he is residing in Swaminarayan Society, which bungalow is in the name of his younger brother's wife. He has categorically stated that he has gone to stay in the Swaminarayan society since January 1977 and he is staying in that bungalow with his wife, three daughters and two sons. The said bungalow in the Swaminarayan society has got cellar with four rooms and kitchen on the ground floor and two rooms on the first floor. At the relevant time it was newly constructed bungalow. Tribhuvandas has stated in his evidence that his brother Prabhudas is staying in the Swaminarayan society. Another brother Bhailalbai was staying in the house owned by him on Amul Dairy road and that house was belonging to the family of the Bhailalbai. The said house is having three bed rooms, one sitting room and one kitchen and accordingly Bhailalbai also got his own

accommodation in the Anand Town. It has been found by the learned appellate judge that house in Swaminarayan society also belonged to the defendant's family, a detailed finding has been given by the learned appellate judge in para 20 of his judgment. The suit premises consists of two rooms and a kitchen while the bungalow in Swaminarayan society has got cellar four rooms and kitchen on the ground floor and two rooms on the upper floor. It has been found by the learned appellate judge on appreciation of evidence that the accommodation in the possession of the defendant no.1 Prabhubhai in Swaminarayan society is sufficient to accommodate his own family and family of Tribhuvandas. In view of categorical finding of fact this court cannot take contrary view on the facts and landlords have clearly made out their case for getting decree for possession under Sec.13(1)(L) of the Rent Act. The tenant who has already shifted his residence and even his family members or brothers who are residing with him have also shifted in the newly constructed premises and when new premises is sufficient to accommodate all the members of the defendant's family including his brother, should gracefully vacate the rented premises. In any case the courts below have appreciated the evidence on record and ultimately reached to the conclusion that the tenant has acquired suitable accommodation. In view of the same, I do not find any substance in this revision application and the same deserves to be dismissed.

#. No error of law is pointed out by the learned advocate for the petitioner and therefore it cannot be said that the order of the appellate court suffers from any infirmity.

#. At this stage, Mr.Vin has placed a reliance on the judgment of the learned single judge of this court dtd.25.9.78 in C.R.A. No.162/77. In the facts of that case it was held that the defendant had acquired some accommodation in apartment constructed by the Housing Board. As per the evidence it was found that brother's wife and other family members were using both the premises. In the aforesaid background of the facts it was found by this court that the tenants family was joint family and therefore the acquisition by one of the members of the family was not found to be a ground for eviction under Sec.13(1)(L) of the Rent Act.

#. However, so far as the facts and circumstances of the present case is concerned, the learned appellate judge has given measurement of both the premises i.e. the suit premises as well as the premises which was acquired on

behalf of the joint family. It was found that the new premises is bigger and entire family can be accommodated in the newly constructed premises. The aforesaid clear cut finding which is based on evidence on record cannot be disturbed by this court. In view of what is stated above, the revision application deserves to be dismissed and is accordingly dismissed. Rule is discharged. No order as to costs. Interim relief shall stand vacated.

##. At this stage Mr.Vin has requested for giving reasonable time to vacate the suit premises. In the facts and circumstances of the case, I direct that the decree for possession may not be executed till 28.2.2001. The said time is given for vacating the suit premises on condition that the petitioner shall file a usual undertaking before this court. In the said undertaking it should be clearly mentioned that the petitioner will hand over peaceful and vacant possession to the respondent on or before 28.2.2001 and that they will not create any obstruction while handing over the possession. The said undertaking is to be filed within a period of six weeks from today. The petitioners should also continue to pay mesne profit regularly every month till they vacate the suit premises.

##. If such undertaking is not filed within a period of six weeks from today or if there is any breach of the aforesaid undertaking at any point of time, it will be open for the opponents to execute the decree for possession forthwith.

kks